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10 Sun Microsystems, Inc.

11 UNITED STATES DISTRICT COURT  
12 NORTHERN DISTRICT OF CALIFORNIA  
13 SAN FRANCISCO DIVISION

14 NETWORK APPLIANCE, INC.,  
15  
16 Plaintiff - Counterclaim  
Defendant,  
17 v.  
18 SUN MICROSYSTEMS, INC.,  
19 Defendant -  
20 Counterclaimant.

CASE NO. 3:07-CV-06053 EDL

**SUN MICROSYSTEMS, INC.'S *EX PARTE*  
APPLICATION TO SHORTEN TIME FOR  
HEARING ON SUN'S MOTION TO  
COMPEL PRODUCTION OF  
DOCUMENTS FROM NON-PARTY  
ORRICK, HERRINGTON & SUTCLIFFE**

**Date: TBD  
Time: TBD  
Courtroom: E, 15th Floor  
Hon. Elizabeth D. Laporte**

21  
22 **I. INTRODUCTION**

23 Pursuant to Northern District of California Local Rules 6-1(b), 6-3 and 7-10, Sun  
24 Microsystems, Inc. ("Sun") requests that the Court shorten time to hear Sun's Motion to Compel  
25 Production of Documents from Non-Party Orrick, Herrington & Sutcliffe ("Orrick") ("Motion to  
26 Compel").

27 The issue here is simple. Sun issued a subpoena to Orrick on January 22, 2008. Five  
28

1 months later, Orrick is prepared to produce the documents, but refuses to do so until Sun  
2 reimburses Orrick for costs that were never agreed upon by the parties. As set forth in Sun's  
3 Motion to Compel, filed concurrently herewith, Orrick is holding documents hostage until Sun  
4 pays \$21,402.52 for costs incurred in copying documents, including documents that will not be  
5 produced to Sun. Orrick's request is unreasonable and contrary to the parties' agreement.  
6 Indeed, at Orrick's request, Sun agreed only to reimburse Orrick for copy costs relating to those  
7 documents actually produced to Sun.

8 Given that Sun has been waiting five months for the production of these documents and  
9 the fact discovery cut-off is quickly approaching (October 13, 2008), Sun will continue to be  
10 prejudiced if its Motion to Compel is heard as a regularly noticed motion, with a hearing date of  
11 August 12, 2008. There will be limited time for Sun to review the documents and notice and take  
12 any necessary depositions. Therefore, Sun requests that the Court grants it *ex parte* motion and set  
13 the hearing (if the Court deems a hearing necessary) for July 29, 2008.

## 14 II. MEET AND CONFER EFFORTS

15 From June 30-July 2, Sun's counsel and Orrick's counsel made several attempts to resolve  
16 the parties' dispute regarding payment of the invoices. (Corbett Decl., ¶ 9.) On July 3, 2008,  
17 Orrick's counsel indicated that Orrick would not be producing any documents and hung up the  
18 phone on Sun's counsel. (Corbett Decl., ¶ 10.) Left with no other option, Sun was forced to  
19 bring this issue to the Court's attention.

## 20 III. LEGAL ARGUMENT

21 Pursuant to Northern District of California Local Rule 6-3 and the Court's inherent power  
22 to manage cases in the interests of justice, Sun respectfully requests that the Court grant its  
23 motion to shorten time on its Motion to Compel. As set forth in the accompanying Notice of  
24 Motion and Memorandum of Points and Authorities in support of Sun's Motion to Compel, Sun  
25 is seeking an order from the Court compelling Orrick to produce documents responsive to a  
26 subpoena served in January, 2008.

27 Sun will be prejudiced if it is forced to notice this motion as a regularly noticed motion  
28 (with a hearing date of August 12, 2008). Sun served its subpoena on Orrick in January, 2008.

1 Five months later, Sun still does not have any documents from Orrick relating to the Whipsaw  
2 Litigation. Given that the fact discovery cut-off is quickly approaching (October 13, 2008), Sun  
3 is left with limited time to review documents and notice and take any necessary depositions.

4 **IV. PROPOSED BRIEFING AND HEARING SCHEDULE**

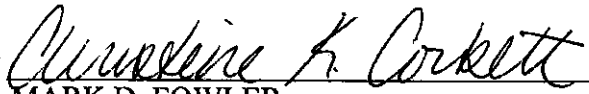
5 Sun proposes the following briefing schedule with respect to its Motion to Compel. Sun's  
6 Motion to Compel is deemed filed as of July 8, 2008. Orrick shall file its opposition, if any, by  
7 5:00 p.m. on July 16, 2008. Sun shall file its reply by 5:00 p.m on July 23, 2008. Sun also  
8 respectfully requests that the Court hear its Motion to Compel (if the Court deems a hearing  
9 necessary) on July 29, 2008 at 9:00 a.m. This schedule provides both Orrick and the Court with  
10 sufficient time to evaluate, respond and consider the papers on file.

11 **V. CONCLUSION**

12 Based on the foregoing, Sun respectfully requests that the Court issue an Order expediting  
13 briefing and hearing on Sun's Motion to Compel.

14  
15 Dated: July 8, 2008.

16 DLA PIPER US LLP

17  
18 By   
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21 Attorneys for Defendant and Counterclaimant  
22 SUN MICROSYSTEMS, INC.  
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